[ORIGINAL CRIMINAL JURISDICTION]

MUDIE, J.

October 17, 1933.

ABDUL HAMID BIN JAMAL . Petitioner

vs.

PUBLIC PROSECUTOR .. Respondent

[PERAK CRIMINAL APPLICATION No. 16 of 1933]

Extradition Enactment, 1914, Sections 9 and 10—Habeas Corpus—Rearrest after direction for release—Res judicata.

An Order made under Chapter XXXVI of the Criminal Procedure Code 1926 (Directions in the nature of a *Habeas Corpus*) for the release of a person arrested and detained under the provisions of the Extradition Enactment 1914 is effective to prevent the matter being re-opened and tried again on fresh evidence in regard to the same transaction.

Applicant in person.

L. C. Simpson-Gray, Deputy Public Prosecutor for Respondent.

MUDIE, J.—This is an application under Section 363 of the Criminal Procedure Code, 1926, by one Abdul Hamid bin Jamal, who is detained in prison on a warrant of extradition under the Extradition Enactment, 1914.

The petitioner was arrested on the 5th May, 1933. He was brought before the Magistrate at Telok Anson on the 30th May. An enquiry was held under Section 9 of the Extradition Enactment, 1914. Evidence was adduced, and the petitioner was committed to prison under Section 10(i) on a charge of embezzlement by a Government official, to await his surrender to the Government of the Netherlands in due course.

On the 8th of June he applied to the Supreme Court for his release on the ground that the evidence did not justify his committal.

The application was heard before Hereford, J. on the 19th June. The learned Judge held that the evidence did not justify the committal, and that the proceedings in other respects were defective. He made an order discharging the accused from custody.

The petitioner was subsequently arrested under a Warrant issued on the 14th day of July, 1933, by the Magistrate under Section 8 (i) (1) of the Extradition Enactment, 1914.

He was taken before the Magistrate on the 15th September. An enquiry was held under Section 9, in respect of the same charge that was the subject of the enquiry held on the 30th of May. Fresh evidence was adduced and another order was made under Section 10 (i), committing him to prison, to await his surrender to the Government of the Netherlands in due course.

He now makes a second application to this Court to be set at liberty.

He was not represented by counsel at the enquiry before the Magistrate. A formal plea of *res judicata* was not tendered. But it appears from the record that he informed the Magistrate that the Supreme Court had already released him once.

In my opinion the learned Magistrate was wrong in making the order of the 15th September, because the matter was already *res judicata*.

The issue was precisely the same as that decided by Hereford, J. on the 19th of June. The matter cannot be reopened and tried again on fresh evidence. There is abundance of authority on the subject. It will be sufficient to cite *In re May*, (1885) 28 Ch.D.516,518.

There will be an order that the petitioner be discharged from custody and set at liberty.

Order accordingly